



No. 83-0317  
IN THE  
**Supreme Court of the United States**

October Term, 1983

SHERMAN BLOCK, *et al.*,

*Petitioners,*

vs.

DENNIS RUTHERFORD, HAROLD TAYLOR, and RICHARD ORR,

*Respondents.*

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

**PETITIONERS' OPPOSITION TO MOTION OF  
THE NEW YORK CITY BOARD OF  
CORRECTIONS TO FILE BRIEF  
OF AMICUS CURIAE.**

FREDERICK R. BENNETT,  
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Petition for Certiorari filed August 23, 1983.  
Certiorari granted November 7, 1983.

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**The Proposed Brief Amicus Curiae Presents Only Factual Evidence, Which Is in Direct Conflict With the Record in This Case, and Which May Mislead the Court Because of the Infeasibility of Resolving the Factual Disputes Before This Court.**

On January 27, 1984, Petitioners, by letter, a copy of which is set forth in the appendix hereto, denied requested permission to the New York City Board of Corrections to file a brief amicus curiae for the reasons set forth in that letter.

The proffered brief states that it "will not review the legal issues". (Amicus Brief, p. 4) Rather, it seeks through factual assertions and pictures to present evidence to the Court concerning experience at New York City jails with contact

visitation. The evidence sought to be introduced is in direct conflict with extensive testimony of the Warden of the largest New York City jail, which is set forth in the record of this case. (RT 20:4281-4371) As indicated in the letter set forth in the appendix, the proffered evidence is also in conflict with a recent investigation involving interviews with current and former administrators of New York City jails. The evidentiary conflict likely flows from the fact that the information is provided by an appointive agency which inspects city jails and promulgates standards, but does not operate jail facilities. (Brief Amicus Curiae, p. 1)

Petitioners' concern is that the court will be misled and that there is little opportunity to refute the factual assertions made, which are inconsistent with specific testimony in the record.

Respectfully submitted,  
FREDERICK R. BENNETT,  
Principal Deputy County Counsel,  
*Counsel for Petitioners.*

## APPENDIX.

Office of the County Counsel  
648 Hall of Administration  
Los Angeles, California 90012

January 27, 1984

974-1830

Barbara Dunkel  
Board of Corrections  
City of New York  
51 Chambers Street  
New York, New York 10007

Re: *Block v. Rutherford*  
No. 83-0317

Dear Ms. Dunkel:

Since my first discussions with you, I have caused a preliminary investigation of the contact visitation practices in certain New York detention facilities to be conducted, including discussions with current and recently retired-administrators. This investigation suggests significant problems with contact visitation similar to the concerns of the Sheriff of Los Angeles County.

This investigation has caused me some concern that your amicus brief may attempt to place before the court facts concerning contact visitation which, in a trial setting, could be reasonably disputed. This is consistent with the record in the present case which contains testimony from an administrator of a New York facility. As appropriate litigation of such facts is not feasible before the Supreme Court, I have serious concerns that your amicus brief may mislead the court. Given the extension of time to file a brief which has been obtained by the respondents, and the dates the court has suggested will be likely for oral arguments, I

believe their will be insufficient time to meet such evidence through amicus briefs from other parties.

As a consequence, I have reconsidered your request to file an amicus brief, and now object to your participation. If you have information that demonstrates my concerns are unfounded, I will, of course, reconsider my position further.

Very truly yours,

DE WITT W. CLINTON

County Counsel

By /s/ Frederick R. Bennett

FREDERICK R. BENNETT

Principal Deputy County Counsel

FRB:srm

cc: Fred Okrand, ACLU